

RANDALL S. LUSKEY (SBN: 240915)  
rluskey@paulweiss.com  
**PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP**  
535 Mission Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (628) 432-5100  
Facsimile: (628) 232-3101

ROBERT ATKINS (*Pro Hac Vice* admitted)  
ratkins@paulweiss.com  
CAITLIN E. GRUSAUSKAS (*Pro Hac Vice* admitted)  
cgrusauskas@paulweiss.com  
ANDREA M. KELLER (*Pro Hac Vice* admitted)  
akeller@paulweiss.com  
**PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP**  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3990

*Attorneys for Defendants*  
UBER TECHNOLOGIES, INC.;  
RASIER, LLC; and RASIER-CA, LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION

Case No. 3:23-md-03084-CRB

### This Document Relates to:

## ALL ACTIONS

**DECLARATION OF MICHAEL B.  
SHORTNACY IN SUPPORT OF  
DEFENDANTS UBER TECHNOLOGIES,  
INC., RASIER, LLC, AND RASIER-CA,  
LLC'S PTO 14 LETTER BRIEF  
REGARDING CLAWBACK DISPUTE**

Judge: Hon. Lisa J. Cisneros  
Courtroom: G – 15th Floor

1 I, Michael B. Shortnacy having personal knowledge of the following state:

2       1. I am a partner at the law firm of Shook, Hardy & Bacon LLP, attorneys of record for  
 3 Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC, (collectively, "Uber"). I am  
 4 a member in good standing of the Bars of the State of California, the State of New York, and the  
 5 District of Columbia. I know the following facts to be true of my own knowledge, except those  
 6 matters stated to be based on information and belief, and if called to testify, I could competently do  
 7 so.

8       2. I respectfully submit this declaration in support of Uber's PTO 14 Letter to clawback  
 9 five Privileged Documents that were inadvertently produced on March 8, 2024.

10      3. On May 7, 2024, Plaintiffs sent Uber a letter regarding PTO5, specifically Uber's  
 11 privilege redactions. Plaintiffs argued there were undisclosed privilege redactions placed on certain  
 12 produced documents. While Plaintiffs acknowledged there were redactions made on the ground of  
 13 legal privilege, Plaintiffs said that Uber had not yet produced a privilege log from that underlying  
 14 case. Plaintiffs cited one of the Privileged Documents as an example illustrating this point.

15      4. Upon investigating Plaintiffs' questions, and unbeknownst to Uber, the document  
 16 Plaintiffs' cited was privileged and inadvertently produced. Specifically, the first page of the  
 17 document had a slip sheet containing only the words "Withheld for Privilege." The document also  
 18 contained conspicuous privilege labels on successive pages. Given this document was inadvertently  
 19 produced, Uber expanded its investigation for similar documents that may have been inadvertently  
 20 produced. In turn, Uber identified four additional documents that were inadvertently produced in the  
 21 same March 8 production. These documents all had the same first page slip sheet containing only  
 22 the words "Withheld for Privilege." In addition, all five documents had prominent indicators of  
 23 attorney-client privilege such as the words "Attorney-Client Privilege and/or Attorney Work  
 24 Product" in page headers (sometimes in conspicuous red font) and some combination of bolded  
 25 black labels stating "AC Privileged," "Privileged and Confidential," and "Attorney Work  
 26 Product." Moreover, on each page of all of the five separate documents (UBER-MDL-3084-  
 27 000093375-UBERMDL3084-000093431), there is a conspicuous Bates label from the *Jane Doe v.*

1 *UTI* litigation, Case No. 2020-67824 (Harris Cnty. D. Ct. Tex.) case indicating that the document  
 2 was part of a privilege log.

3       5. On May 10, 2024, Uber sent its Notice of Clawback. In the letter, it explained the  
 4 Privileged Documents were never produced in the *Jane Doe v. UTI* litigation, Case No. 2020-67824  
 5 (Harris Cnty. D. Ct. Tex.), thus do not meet the requirements of PTO5; and the documents reflect  
 6 privileged communications between Uber employees and Uber’s in-house legal counsel. Uber  
 7 expressed its disappointment that, despite unambiguous privilege markers, “Plaintiffs continued  
 8 reviewing and handling these documents without immediately notifying us that you possess material  
 9 that appeared to be privileged.” Uber’s Clawback Letter, at 3 (Ex. A).

10      5. On May 20, 2024, Plaintiffs served a Notice of Clawback Challenge. The notice  
 11 baldly stated that the reasons that Uber provided were “insufficient.” Plaintiffs failed to provide any  
 12 context as to why they were challenging the claims of privilege. Plaintiffs’ Notice of Clawback  
 13 Challenge, at 3 (Ex. B). Plaintiffs claimed that “the mere fact that documents were withheld in  
 14 earlier litigation … does not allow them to be withheld in this MDL.” *Id.* They also noted that the  
 15 mere presence of an attorney on a document does not automatically implicate privilege. *Id.* Of note,  
 16 however, Plaintiffs failed to identify what information they did not have to evaluate claims of  
 17 privilege in their Notice of Clawback Challenge.

18      6. On May 30, 2024, Uber sent its Response to the Notice of Clawback Challenge  
 19 (“Uber’s Challenge Response”). In the Response Letter, Uber reaffirmed that the Texas court had  
 20 ruled that four of the five inadvertently produced Privilege Documents were privileged when  
 21 challenged by the *Doe* plaintiff. Uber’s Challenge Response, at 3.

22      7. Uber’s Challenge Response also provided the basis for the privilege claims for each  
 23 document, as well as enclosed the hearing transcript that contained the Texas court rulings, and  
 24 supplied previously-filed declarations supporting the claims of privilege. Additionally, for each of  
 25 the 4 documents, Uber pointed Plaintiffs to, and cited, the Texas court’s consistent rulings that these  
 26 4 documents are privileged. For document UBER-MDL3084-000093375, Texas court ruled “that  
 27 the content, the substance of this is privileged.” Ex. 3, at 4. For documents UBER-MDL3084-

1 000093385 and UBER-MDL3084-000093391, that trial court stated “I’m going to sustain the privilege  
 2 claim.” Ex. 3, at 5. And, for document UBER-MDL3084-000093397, the Texas court “sustain[ed]  
 3 privileges” for it. *Id.*

4 8. Also, on May 30, 2024, Uber offered to meet and confer with Plaintiffs about the  
 5 Clawback Challenge. Uber provided the following dates: June 3, 2024 and June 4, 2024.

6 9. On June 3, 2024, Plaintiffs responded stating they needed more information about an  
 7 exhibit to Uber’s Challenge Response and offered to meet and confer on June 6, 2024.

8 10. On June 5, 2024, Uber provided the requested additional information. Thereafter,  
 9 Plaintiffs canceled the June 6 meeting and proposed to meet on June 7, 2024. Due to a scheduling  
 10 issue, the parties agreed to meet and confer on June 10, 2024.

11 11. At the June 10 meet and confer, and having failed to provide any basis in their  
 12 Clawback Challenge, Plaintiffs were unwilling to provide the basis for challenging the privilege  
 13 claims. Uber re-emphasized its efforts of providing Plaintiffs the Texas hearing transcript and  
 14 previously-filed declarations for four documents ruled on by the Texas court. However, Plaintiffs did  
 15 not ask about the merits of the privilege claims. Instead, they largely asked Uber to confirm items  
 16 that were publicly filed in the *Doe* case and whether Uber contended the documents are privileged in  
 17 their entirety (which Uber had already clarified in the Notice of Clawback). When asked about the  
 18 bases for their challenges, Plaintiffs’ counsel responded – that is “not what the meet and confer  
 19 process is about.” They also admitted to not having sufficient information to state any reasons they  
 20 believed the privilege claims are insufficient.

21 13. In response, Uber explained it had already provided the necessary information on  
 22 May 30, 2024, in its Challenge Response and supporting documentation.

23 14. One week after the meet and confer, on June 17, 2024, Plaintiffs conceded that three  
 24 of the Privileged Documents contained privileged communications. *See* Ex. 9. On June 18, 2024,  
 25 Uber provided its draft of the letter brief. *See* Ex. 9. The same day, Plaintiffs withdrew their  
 26 objection to clawing back UBER-MDL3084-00009339. The next day, on June 19, 2024, Plaintiffs  
 27 withdrew their clawback challenge to UBER-MDL3084-000093375. *See* Ex. 9.

1       15. It was not until June 17, 2024, the night before Uber circulated its letter brief, that  
 2 Plaintiffs provided any explanation as to why they were challenging the merit of any privilege  
 3 claims. And, in doing so, they agreed that three of the Privileged Documents contained privileged  
 4 communications.

5       16. A true and accurate copy of the document UBERMDL3084-0000933385 that is the  
 6 subject of the Clawback Challenge is attached hereto as **Exhibit 1**. It is undisputed that it contains  
 7 attorney-client privileged communications, and Uber designated the document as “HIGHLY  
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as it contains Uber’s internal and confidential  
 9 information. A Texas court also ruled that the document was privileged.

10       17. A true and accurate copy of the document UBERMDL3084-0000933391 that is the  
 11 subject of the Clawback Challenge is attached hereto as **Exhibit 2**. It is undisputed that it contains  
 12 attorney-client privileged communications, and Uber designated the document as “HIGHLY  
 13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as it contains Uber’s internal and confidential  
 14 information. A Texas court also ruled that the document was privileged.

15       18. A true and accurate copy of the document UBERMDL3084-000093421 that is the  
 16 subject of the Clawback Challenge is attached hereto as **Exhibit 3**. The document is conspicuously  
 17 marked in bold, red font as “ATTORNEY CLIENT PRIVILEGED” and Uber has previously  
 18 withheld the document on that basis. Uber designated the document as “HIGHLY  
 19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as it contains Uber’s internal and confidential  
 20 information.

21       19. A true and accurate copy of Uber’s Notice of Clawback, as emailed by Uber’s  
 22 counsel to Plaintiffs’ counsel on May 10, 2023, is attached hereto as **Exhibit 4**.

23       20. A true and accurate copy of Plaintiffs’ Notice of Clawback Challenge, as emailed by  
 24 Plaintiffs’ counsel to Uber’s counsel on May 20, 2023, is attached hereto as **Exhibit 5**.

25       21. A true and accurate copy of Uber’s Response to the Notice of Clawback and its four  
 26 exhibits, as emailed by Uber’s counsel to Plaintiffs’ counsel on May 30, 2023, are attached hereto as  
 27 **Exhibit 6**.

1       22. A true and accurate copy of Uber's May 30, 2024, privilege log is attached hereto as

2 **Exhibit 7.**

3       23. A true and accurate copy of a June 19, 2024 email from Plaintiffs' counsel, Tiffany  
4 Ellis, to Uber's counsel Re: Privilege Clawback M&C is attached hereto as **Exhibit 8.**

5       24. A true and accurate copy of the Declaration of Nicole Benincasa, Esq. in support of  
6 Uber's PTO 14 Letter brief executed on June 18, 2024 is attached hereto as **Exhibit 9.**

7       25. A true and accurate copy of Pretrial Order 14, ECF 396, is attached hereto as **Exhibit**  
8 **10.**

9  
10      I declare under penalty of perjury that the foregoing is true and correct.

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12      Executed on June 24, 2024.

By: */s/ Michael B. Shortnacy*  
Michael B. Shortnacy

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